

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **MAIRA RIVERA PRIETO,**

4 **Plaintiff,**

5 **v.**

Civil No. 11-1785 (GAG)

6 **MICHAEL J. ASTRUE,**
7 **COMMISSIONER OF SOCIAL**
8 **SECURITY,**

8 **Defendant.**

9 **ORDER**

10 The court hereby **AFFIRMS** the decision of the Commissioner of Social Security denying
11 plaintiff disability benefits. In doing so, the undersigned has reviewed and considered the
12 administrative record below, as well as the parties' memoranda (Docket Nos. 13 & 15).

13 Plaintiff first contends that the administrative law judge ("ALJ") below erred by not giving
14 controlling weight to Drs. Jimenez and Vazquez's reports pertaining to her mental condition. The
15 ALJ, while doing so, however gave more weight to the assessments of medical consultant Elvira
16 Giambartolomei, who personally evaluated her on April 7, 2008. (Tr. 15-16.) The ALJ further gave
17 his reasons for giving Dr. Giambartolomei controlling weight. This was well within the ALJ's
18 province, i.e., weighing the evidence. Rodriguez v. Sec'y of Health and Human Servs., 647 F.2d
19 218, 222 (1st Cir. 1981). More so, an ALJ need not give, as here, a treating physician's opinion
20 controlling weight, if the reasons for doing so are spelled out in the record. See Shaw v. Sec'y of
21 Health and Human Servs., 25 F.3d 1037, 1994 WL 251000 *3-4 (1st Cir. 1994).

22 Plaintiff next contends it was error by the ALJ to reject her allegations of numbness in her
23 hands. Here, the ALJ gave greater weight to the opinions of Drs. German Malaret and Murbank.
24 (Tr. 14-15.) This was also within the ALJ's province. See Rodriguez, supra.

25 Finally, plaintiff alleges that the ALJ based his conclusion of no disability on his own
26 medical and vocational opinion. The record, however, belies this assertion. The ALJ determined
27 plaintiff's RFC based on the medical evidence that was given controlling weight. More so,
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1 questions to the vocational expert were based on such medical evidence of weight.

2 In sum, in the case at bar, the ALJ properly fulfilled his responsibility of weighing the
3 evidence and resolving any conflicts with the same. Seavey v. Barnhart, 276 F.3d 1, 10 (1st Cir.
4 2001). It is the role of this court on appeal to determine only whether the decision below is
5 supported by “substantial evidence” of record (– it is). And, it is not up to his court to substitute its
6 own judgment for that of the ALJ. Lizotte v. Sec’y of Heath and Human Servs., 654 F.2d 127, 128
7 (1st Cir. 1981).

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9 **SO ORDERED.**

10 In San Juan, Puerto Rico this 17th day of February 2012.

11 *s/Gustavo A. Gelpi*
12 GUSTAVO A. GELPI
13 United States District Judge
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